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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,424	08/25/2003	John McFarland Harris	CE10278R	2794

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MOTOROLA, INC.
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EXAMINER
HO, HUY C

ART UNIT	PAPER NUMBER
2617	

NOTIFICATION DATE	DELIVERY MODE
06/20/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

Docketing.Schaumburg@motorola.com
APT099@motorola.com

Advisory Action *Before the Filing of an Appeal Brief*	Application No. *10/647,424*	Applicant(s) HARRIS ET AL.	
	Examiner HUY C. HO	Art Unit 2617	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>27 May 2008</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a) ☒ The period for reply expires <u>3</u> months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

(a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

(b)☐ They raise the issue of new matter (see NOTE below);

(c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

(d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: <u>1-9 and 22-25</u>.

Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet.</u>

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/Duc Nguyen/
Supervisory Patent Examiner, Art Unit 2617

/Huy Ho/

Continuation of 11. does NOT place the application in condition for allowance because: the main argued features, i.e., method and system for regulating play-out depth of a buffer in a destination mobile unit, comprising: receiving a communication from a source unit in a play out buffer, playing the communicaiton, determining the remaining playout depth of the buffer in the destination unit, sending an indication to the source unit about the threshold levels of the play out depth in the buffer in the destination unit, adjusting the communication rate between the source and destination units accordingly, read upon Kramer in view of Rogers as follows.

Kramer teaches a method and system for buffer management, where the transmission rate mismatches between the wireless transmitting device and wireless receiving device are adjusted, compensated based on some predetermined criteria and conditions of threshold levels such as high or low thresholds (see the abstract, figure 1, col 3 lines 30-67, col 4 lines 1-53, Kramer describes a wireless IP network communication between a transmitting device and a receiving device, a buffer management system is used for adjusting mismatched rate between them based on some criteria and conditions of levels of threshold). Kramer also discusses the buffer management system evaluates condition of the buffer and indications about the condition are stored and used for the adjustment the transmission rate (see col 9 lines 60-67, col 10 lines 1-43). Rogers teaches system and method for adjusting mismatched transmission rate between devices in a wireless network where the rate is monitored by monitoring the level of the buffer, if the level is to high or too low (i.e., higher or lower than some predetermined threshold levels), then there is an indication of a rate mismatch between the wireless devices, and proper adjustments are then made to adjust the mismatch (see the abstract, sections [8]-[9], [41]-[42], [45]-[47]), thus, Kramer in view of Rogers discloses method and system for regulating play-out depth of a buffer in a destination mobile unit, comprising: receiving a communication from a source unit in a play out buffer, playing the communicaiton, determining the remaining playout depth of the buffer in the destination unit, sending an indication to the source unit about the threshold levels of the play out depth in the buffer in the destination unit, adjusting the communication rate between the source and destination units accordingly.

Thus, the argued features were written such that they read upon the cited references.
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